

HOUSE No. 862

By Ms. Jehlen of Somerville, petition of Patricia D. Jehlen and others relative to the penalties for the possession of marijuana. The Judiciary.

The Commonwealth of Massachusetts

PETITION OF:

Patricia D. Jehlen	Benjamin Swan
Douglas W. Petersen	Michael E. Festa
Ruth B. Balser	Frank I. Smizik
Ellen Story	Dianne Wilkerson
Anne M. Paulsen	

In the Year Two Thousand and Five.

AN ACT TO IMPOSE A CIVIL FINE FOR THE POSSESSION OF MARIHUANA.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The first paragraph of section thirty-four of
2 chapter ninety-four C of the General Laws as appearing in the
3 1998 Official Edition, is hereby amended by striking the fourth
4 and fifth sentences thereof and inserting the following:—
5 Any person who violates this section by possession of less than
6 an ounce of marihuana shall pay a civil assessment of one hun-
7 dred dollars. Any person who violates this section by possession
8 of an ounce or more of marijuana or a controlled substance in
9 Class E of section thirty-one shall be punished by imprisonment
10 in a house of correction for not more than six months or a fine of
11 five hundred dollars, or both. Except for an offense involving less
12 than an ounce of marihuana or a controlled substance in Class E
13 of section thirty-one, whoever violates the provisions of this
14 section after one or more convictions of a violation of this section
15 or of a felony under any other provisions of this chapter, or of a
16 corresponding provision of earlier law relating to the sale or man-
17 ufacture of a narcotic drug as defined in said earlier law, shall be

18 punished by imprisonment in a house of correction for not more
19 than two years or by a fine of not more than two thousand dollars,
20 or both.

1 SECTION 2. Section thirty-four of chapter ninety-four C of the
2 General Laws as appearing in the 1998 Official Edition, is hereby
3 amended by inserting after the last paragraph thereof the
4 following:—

5 A violation of this section by possession of marihuana shall, the
6 first clause of section seventy C of chapter two hundred and
7 seventy-seven notwithstanding, be treated as a civil infraction and
8 disposed of in accordance with the provisions of section seventy C
9 of chapter two hundred and seventy-seven. An adjudication of
10 responsibility shall neither be used as the basis for denial or revo-
11 cation of any license granted by the Commonwealth of Massachu-
12 setts, nor be deemed a conviction for purposes of any
13 disqualification or for any other purpose. A police officer who
14 observes the occurrence of the civil infraction of possessing mari-
15 huana shall cite the violator for the civil infraction. If the violator
16 is under the age of seventeen the citation shall be delivered to one
17 of the parents or the legal guardian of said person, or to the clerk
18 of the district court having jurisdiction. The citation shall be in the
19 form provided for by General Laws chapter 90C, section 1. The
20 procedures as set forth in the fifth paragraph of section 2 of
21 chapter 90C for the delivery of a citation alleging one or more
22 criminal automobile law violations to the clerk-magistrate of the
23 district court where the violation occurred shall be followed.
24 Except as provided herein the provision for the processing of cita-
25 tions set forth in chapter ninety C, sections 3(B)(2) and 3(C) shall
26 apply. No person cited only for the civil infraction of possessing
27 less than an ounce of marihuana shall be required to report to any
28 probation officer, and no record of the case shall be entered in any
29 probation records. Unless additional criminal offenses are set
30 forth on the citation the violator may confess the civil violation of
31 possessing less than an ounce of marihuana either personally or
32 through a duly authorized agent or by mailing to the clerk of the
33 district court having jurisdiction thereof the sum assessed either
34 with the citation instead of requesting a hearing. The receipt by
35 the district court clerk of such payment shall operate as a final dis-

36 position of the case. Any person cited to appear before the clerk of
37 a district court who fails to pay the civil assessment provided
38 hereunder within the time specified or, having requested a hearing
39 fails to appear, or who after a hearing and finding as provided
40 herein fails to pay the civil assessment or perform community
41 service within thirty days, shall not have the matter treated as a
42 civil violation as provided in this paragraph and shall be punished
43 as if originally complained of for possessing an ounce or more of
44 marihuana.

1 SECTION 3. Section forty-one of chapter ninety-four C of the
2 General Laws as appearing in the 1998 Official Edition, is hereby
3 amended by adding at the end of clause (a) the following:—
4 ,except for violation of the provisions of section thirty-four
5 involving less than an ounce of marihuana by a person seventeen
6 years of age or older;.

1 SECTION 4. Section forty-one of chapter ninety-four C of the
2 General Laws as appearing in the 1998 Official Edition, is hereby
3 further amended by inserting in clause (c) after the words, “thirty-
4 four” the following:— , except for violation involving less than an
5 ounce of marihuana by a person eighteen years of age or older,.